



## Broadcasting Decision CRTC 2010-362

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Route reference: 2010-95

Ottawa, 10 June 2010

**Glassbox Television Inc.**  
Across Canada

*Application 2010-0010-9, received 7 January 2010*

### **BITE Television – Licence amendment**

*The Commission **approves in part** the application by Glassbox Television Inc. to amend the broadcasting licence for the Category 2 specialty service known as BITE Television in order to change the condition of licence relating to its nature of service.*

### **Introduction**

1. The Commission received an application by Glassbox Television Inc. (Glassbox) to amend the broadcasting licence for the Category 2 specialty programming undertaking BITE Television (BITE), formerly known as Short TV. The licensee proposed to remove the word “entirely” from its nature of service condition of licence, which currently reads as follows:

The licensee shall provide a national English-language Category 2 specialty television service devoted entirely to short form films shot on film, video or created with computer animation. Short TV will showcase Canadian and international cutting edge short form films, from 1 to 40 minutes in length.

2. Glassbox also proposed to add program categories 7(b) On-going comedy series (sitcoms) and 7(d) Theatrical feature films aired on TV to the list of categories from which it may draw programming. The licensee stated that it would accept a condition of licence limiting the proportion of programming that the service could draw from category 7(d) to 15% of the broadcast day, measured during each six-month semester.
3. Glassbox submitted that the addition of program categories 7(b) and 7(d) would enable it to better meet the needs and interests of Canadian audiences and short-form film producers and would be in the spirit of its nature of service. The licensee further submitted that the proposed amendments were consistent with the rules on direct competition set out in Public Notice 2000-6 and the approach to programming flexibility established in Broadcasting Public Notice 2008-100. In addition, the applicant noted that the service’s profits before interest and taxes have not been positive since its launch and are worsening over time. The Commission did not receive any interventions in connection with this application.

4. Having examined the application in light of applicable policies and regulations, the Commission considers that the issues to be determined are whether the proposed amendments would permit the service to become directly competitive with existing Category 1 or analog pay or specialty services and whether they are consistent with the rules established in Broadcasting Public Notice 2008-100. Notwithstanding the financial evidence provided by the licensee, the Commission notes that the licensing framework for Category 2 services was established on an open-entry basis and that their viability and business plans are not factors taken into consideration when approving or denying proposed services. For that reason, the Commission does not consider the financial argument put forth by the licensee to be a key consideration in the approval or denial of its licence amendment request.

### **Commission's analysis and determinations**

5. In Broadcasting Public Notice 2008-100, the Commission expressed the view that, in most instances, the narrative descriptions of existing Category 1 and analog pay and specialty services (to be known as Category A services as of 31 August 2011) are sufficiently specific to ensure that these services remain true to the genre for which they were licensed. Consequently, the Commission determined that it would permit all Category A services to draw programming from all program categories, thereby providing these services with greater flexibility. However, to ensure that this change does not permit services to morph into other established programming genres and thus become directly competitive with other Category A services, the Commission established a standard limitation of 10% of the broadcast month for the following categories:

- 2(b) Long-form documentary;
- 6(a) Professional sports;
- 7 Drama and comedy;
- 7(d) Theatrical feature films aired on television;
- 7(e) Animated television programs or films; and
- 8(b) and (c) combined – Music video clips and Music video programs.

6. Although the Commission stated that it did not intend to apply the above-noted general approach to Category 2 services, it indicated that in assessing applications for new Category 2 services or applications for amendments to nature of service conditions of licence for such services, it would generally apply the same limitations.
7. With respect to the licensee's request to eliminate the word "entirely" from its nature of service, the Commission is concerned that approval of this amendment might provide the licensee with an opportunity to depart from its current focus on short-form films beyond the programming flexibility generally granted pursuant to Broadcasting Public Notice 2008-100. The Commission considers that an appropriate alternative to an approval or denial of the licensee's proposal would be to amend BITE's nature of service definition by replacing the word "entirely" with the word "predominantly." In the Commission's view, this will ensure that BITE's programming remains devoted to a large extent to short-form films and maintains its diversity while allowing the licensee additional programming flexibility.

8. With respect to the applicant's request to add categories 7(b) and 7(d) to the programming categories from which it may draw, the Commission notes that while BITE was approved to offer programming that is entirely devoted to short-form films, the service is currently authorized to draw programming from the following categories:

- 2(a) Analysis and interpretation
- 5(b) Informal education/Recreation and leisure
- 7(a) On-going dramatic series
- 7(e) Animated television programs and films
- 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
- 7(g) Other drama
- 8(b) Music video clips
- 8(c) Music video programs
- 11 General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

9. The Commission considers that the addition of program category 7(b) would not raise any competitiveness issues with any existing Category 1 or analog pay or specialty services as none is devoted to the broadcast of sitcoms. Moreover, the Commission finds that the addition of this category would be consistent with the short-form genre offered on BITE. For these reasons, the Commission does not consider it necessary to limit the offer of programming from program category 7(b).
10. As mentioned above, the licensee also proposed the addition of program category 7(d) and indicated its willingness to accept a condition of licence limiting the proportion of programming that it could draw from this category to 15% of the broadcast day, measured during each six-month semester. Consistent with Public Notice 2008-100, the Commission considers it appropriate to apply the standard 10% limitation on programming drawn from category 7(d), measured over the broadcast month rather than a six-month period as proposed by the licensee.

## Conclusion

11. In light of the above, the Commission **approves in part** the application by Glassbox Television Inc. to amend the broadcasting licence for the Category 2 specialty programming undertaking known as BITE Television. The new **condition of licence** relating to its nature of service shall read as follows:
- 4. a) The licensee shall provide a national, English-language Category 2 specialty television service devoted predominantly to short-form films shot on film, video or created with computer animation. The licensee will showcase Canadian and international cutting-edge short-form films, from 1 to 40 minutes in length.

b) The programming must be drawn exclusively from the following program categories set out in Item 6 of Schedule I to the *Specialty Services Regulations, 1990*:

- 2(a) Analysis and interpretation
- 5(b) Informal education/Recreation and leisure
- 7(a) On-going dramatic series
- 7(b) On-going comedy series (sitcoms)
- 7(d) Theatrical feature films aired on TV
- 7(e) Animated television programs and films
- 7(f) Programs of comedy sketches, improvisations, unscripted works, stand-up comedy
- 7(g) Other drama
- 8(b) Music video clips
- 8(c) Music video programs
- 11 General entertainment and human interest
- 12 Interstitials
- 13 Public service announcements
- 14 Infomercials, promotional and corporate videos

c) The licensee shall devote no more than 10% of the programming broadcast each broadcast month to programming drawn from category 7(d).

d) No more than 15% of all programming broadcast over the broadcast day and the evening period (measured in each case during the broadcast semester) shall be devoted to material drawn from category 8(b) or 8(c).

For the purpose of these conditions of licence, the term “broadcast semester” shall mean the total number of hours devoted by the licensee to broadcast during the aggregate of the broadcast months in a sixth-month period, beginning 1 September 2008.

Secretary General

#### **Related documents**

- *Regulatory frameworks for broadcasting distribution undertakings and discretionary programming services* – Regulatory policy, Broadcasting Public Notice CRTC 2008-100, 30 October 2008
- *Short TV*, Decision CRTC 2001-770, 20 December 2001
- *Licensing framework policy for new digital pay and specialty services*, Public Notice CRTC 2000-6, 13 January 2000

\* *This decision is to be appended to the licence.*